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**CALIFORNIA STATE PERSONNEL BOARD
801 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814**

**California Code of Regulations Title 2,
Division 1, Subchapter 1, Article 1.2,
Hearings and Appeals**

ARTICLE 1. GENERAL PROVISIONS

§ 51.1 Scope of Article

The regulations in this subchapter shall apply to all Appellants, Complainants, and Respondents and all hearings and investigative reviews conducted by the Board or its designees.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 51.2 Definitions

Unless the context requires otherwise, the following definitions shall apply to regulations in this article.

- (a) "Administrative Law Judge" or "ALJ" means a person employed by the State Personnel Board (SPB) to conduct evidentiary hearings under this article.
- (b) "Adverse action" means an action taken by an appointing power to discipline an employee and includes formal reprimand, transfers for disciplinary reasons, suspension, reduction-in-salary, demotion and dismissal.
- (c) "Agency" means any agency, department, board, commission, district, or other designated entity that employs state civil service employees.
- (d) "Appeal" means any written request for relief or review filed as provided in these regulations and includes "application," "petition," "protest," "complaint" and "answer" pursuant to section 19575 of the Government Code."
- (e) "Appeals division" means the Appeals Division of the State Personnel Board.
- (f) "Appellant" means the person or organization filing any appeal with the SPB.

(g) "Appointing authority" or "appointing power" means the individual or entity that possesses the final authority to appoint and/or dismiss a state employee.

(h) "Board" means the five-member State Personnel Board.

(i) "Brought to Hearing" means when the record is opened for the purposes of initiating the evidentiary hearing and receiving evidence.

(j) "Business days" means all days that all state agencies are open for business, excluding weekends, holidays, or other designated days. For purposes of these regulations, unless otherwise indicated a business day commences at 8:00 a.m. and concludes at 5:00 p.m. The term "business days" includes the term "working days."

(k) "Complainant" means the person or organization filing a complaint of discrimination, harassment, retaliation, or denial of reasonable accommodation for a known physical or mental disability.

(l) "Constructive Medical Action" means an involuntary transfer or demotion, or a refusal to permit an employee to return to work for purported medical reasons without providing the employee those due process protections set forth in Government Code section 19253.5.

(m) "Days" means calendar days, unless otherwise indicated.

(n) "Examination appeal" means appeals concerning allegations that: an Appellant's civil service examination was not accepted by the examining agency; civil service examination statutes, regulations or policies were violated during the examination process; and/or improprieties in the appointment or promotion process.

(o) "Evidentiary hearing" means a hearing conducted before an ALJ, during which: opening and closing arguments are permitted; direct examination and cross examination of witnesses is permitted; physical and documentary evidence may be introduced and admitted; and a proposed decision is submitted by the ALJ for review by the Board.

(p) "Executive Officer" means the Executive Officer of the State Personnel Board, as designated in Article VII, section 3, subdivision (b), of the California Constitution.

(q) "Hearing Officer" means a State Personnel Board employee designated by the Board, the Executive Officer, or other appropriate authority, to conduct a hearing concerning appeals from pre-employment medical or psychological disqualification, appeals from a failure of a pre-employment drug test, and other

appeals as deemed appropriate, in accordance with the provisions of section 54.1.

(r) "Informal Hearing" means a hearing conducted pursuant to Government Code sections 11445.10 through 11445.60 by a Presiding Officer.

(s) "Investigative Officer" means a State Personnel Board employee designated by the Board, the Executive Officer, or other appropriate authority, to conduct an investigative review concerning merit issue appeals, requests-to-file-charges, appeals from withhold from certification, appeals from voided appointment, examination appeals, requests from dismissed employees to take civil service examinations, and other appeals as deemed appropriate.

(t) "Investigative Review" means an investigation conducted by an Investigative Officer during which the Investigative Officer shall have the authority to conduct the investigation in accordance with the provisions of section 55.1.

(u) "Investigatory Hearing" means an evidentiary hearing conducted by the Chief ALJ's designee in accordance with the provisions of section 55.2.

(v) "Medical Action" means an action to transfer, demote, dismiss, or to apply for involuntarily disability benefits on behalf of an employee for asserted medical reasons, pursuant to the provisions of Government Code section 19253.5.

(w) "Merit issue appeal" means an appeal concerning allegations that the State Civil Service Act or State Personnel Board regulation or policy related to applications, appointments and promotions within the civil service system has been violated by an agency. Merit issue appeals include, but are not limited to, allegations of interference with promotional opportunities, disputes concerning the effective date of appointments and promotions, and the applicability of alternate salary ranges. Merit issue appeals do not include appeals of actions that are specifically provided for elsewhere in law or in board regulations.

(x) "Non-punitive action" means an action to transfer, demote, or dismiss an employee for failure to meet one or more requirements for continuing employment pursuant to the provisions of Government Code section 19585.

(y) "Office of the Chief Counsel" means the Office of the Chief Counsel for the Board.

(z) "Peremptory strike" means the disqualification without cause of an ALJ assigned to a hearing.

(aa) "Rejection during probationary period" or "rejection" means an action to remove an employee from a probationary appointment.

(bb) "Respondent" means the person or state agency from whose action or decision the Appellant is seeking relief.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 51.3 Construction of Regulations

(a) As used in these regulations, words in the singular shall include the plural and words in the plural shall include the singular, unless the context otherwise requires.

(b) Statutory references are to the Government Code unless otherwise specified.

(c) In these regulations, whenever a time is stated within which an act is to be done, the time is computed by excluding the first day, and including the last day. If the last day is any day the board is closed for business, that day is also excluded.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

ARTICLE 2. FILING WITH SPB

§ 52.1 Papers; type size

(a) All papers filed with SPB must be on 8 ½ by 11 inch paper, printed or typewritten or be prepared by a photocopying or other duplication process that produce clear and permanent copies equally as legible as printing.

(b) All typewritten papers filed with SPB must be printed in type not smaller than 12 point.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government code.

§ 52.2 Changes in Mailing Address

All parties shall inform the Appeals Division of any change in their mailing address at the time of the change but not later than 1 week after the change.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 52.3 Filing Notices of Adverse Action with SPB

Thirty (30) days after the effective date of this section, the Appointing Authority shall file Notices of Adverse Action with the Board utilizing the Board's on-line filing system.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 52.4 Requirements and Method of Delivery for Filing Appeals and Complaints with the SPB

Appeals filed with the SPB shall be subject to the following:

- (a) All appeals and complaints shall be in writing.
- (b) Except as otherwise provided in these Regulations, each appeal and complaint shall be filed with the Appeals Division and shall:
 - (1) Identify the name, address, and telephone number of the Appellant or Complainant;
 - (2) If different than the Appellant or Complainant, identify the name, address, and telephone number of the person filing the appeal or complaint, including the State Bar number if the person filing the appeal or complaint is an attorney.
 - (3) Except as provided in Government Code section 19575, state the facts that form the basis for appeal or complaint;
 - (4) Identify all Respondents known to the Appellant or Complainant including, for individually-named Respondents, first and last name, job title, and business address.
- (c) Unless the appeal or complaint names some other Respondent, the Appellants or Complainant's appointing power shall be considered the only Respondent.
- (d) The Appeals Division shall mail or serve a copy of the appeal or complaint to or on the Respondents.
- (e) Time Limitations for Filing Appeals or Complaints with the SPB

Except as otherwise provided in the act or these regulations, every appeal or complaint shall:

- (1) be filed with the Appeals within the following time limits;
- (A) Appeals from disciplinary action filed pursuant to the provisions of Government Code sections 19575, shall be filed within 30 days after the effective date of the notice of adverse action;
 - (B) Appeals from disciplinary action filed pursuant to the provisions of Education Code section 89539, subdivision (a), or Government Code section 19590, subdivision (c), shall be within 30 days of the employee's receipt of the notice of adverse action;
 - (C) Appeals from rejection during probationary period filed pursuant to the provisions of Government Code section 19175 shall be filed within 15 days of the effective date of the notice of rejection during probationary period;
 - (D) Appeals from non-punitive transfer, demotion, or termination filed pursuant to the provisions of Government Code section 19585 shall be filed within 30 days after the effective date of the notice of non-punitive action;
 - (E) Appeals from medical transfer, demotion, or termination filed pursuant to the provisions of Government Code section 19253.5, subdivision (f), shall be filed within 15 days of service of the notice of medical action;
 - (F) Appeals from Career Executive Assignment termination filed pursuant to the provisions of Government Code section 19889.2 shall be filed within 30 days of the employee's receipt of the notice of termination;
 - (G) Complaints of whistleblower retaliation filed pursuant to the provisions of Education Code section 87164 or Government Code sections 8547.8 and 19683, shall be filed within one year from the most recent act of reprisal complained about;
 - (H) Requests-to-File-Charges filed pursuant to the provisions of Government Code section 19583.5 shall be filed within one year of the event or events upon which the appeal is based;
 - (I) Appeals from constructive medical transfer, suspension, demotion, or termination shall be filed within 30 days of the employee being notified that he or she would not be permitted to resume the duties of their position;

(J) Appeals from the following types of cases shall be filed within 30 days of the effective date of the action:

(i) Termination of appointment from the Limited Examination and Appointment Program (LEAP); and

(ii) Termination or automatic resignation from a Permanent Intermittent appointment;

(K) Appeals from pre-employment medical disqualification, pre-employment psychological disqualification, and pre-employment drug test failure, shall be filed within 30 days of the date of service of the notice of disqualification;

(L) Appeals from improprieties in the civil service examination process shall be filed as follows:

(i) Appeals from qualification appraisal interviews shall be filed within 30 days of the date that examination results are mailed to the Appellant;

(ii) Appeals from written examinations shall be filed within 30 days of the date that examination results are mailed to the Appellant.

(M) Petitions to Set Aside Resignations pursuant to Education Code section 89542 shall be filed within 30 days after the last date upon which services to the state university or college are rendered, or the date the resignation is tendered, whichever is later;

(N) Appeals from Automatic Resignation for Absence Without Leave pursuant to Education Code section 89541 shall be filed within 90 days of the effective date of such separation. If the appointing authority has notified the employee of the automatic resignation, any request for reinstatement must be filed within 15 days of the service of notice of separation;

(O) Appeals from disciplinary action, rejection during probationary period, medical transfer or termination, automatic resignation, layoff, refusal to hire from a re-employment list, or grievance involving discrimination or political affiliation, filed pursuant to the provisions of Government Code section 19800 – 19810, pertaining to Local Agencies, shall be filed in accordance with the provisions of Title 2, Division 5, Chapter 2, Article 8, Subarticle 1, section 17550.

(P) Appeals from Withhold from Certification and Voided Appointment shall be filed within 30 days of the date that the Notice of Withhold from Certification or Notice of Voided Appointment is mailed to the Appellant.

(2) In all other cases, the appeal or complaint shall be filed within 30 days after the event upon which the appeal or complaint is based.

(3) Any Appellant or complainant seeking to file an appeal or complaint beyond the time limits in this section, must file a petition with the Chief ALJ or his or her designee demonstrating good cause as to why the appeal or complaint should be accepted. Upon good cause being shown, the Chief ALJ or his or her designee may allow an appeal or complaint, except as otherwise limited by statute, to be filed within 30 days after the end of the period in which the appeal or complaint should have been filed.

(f) Methods of Delivery for Filing Appeals or Complaints with the SPB

(1) Appeals or complaints delivered by electronic mail (e-mail) will be filed on the date received by SPB.

(2) Appeals or complaints delivered by the U.S. Postal Service are filed on the date received by the SPB. An Appellant or Complainant may obtain proof of the filing of the appeal or complaint by submitting either an extra copy of the appeal or complaint or the first page only, with a self-addressed, return envelope, postage prepaid. The Appeals Division shall return the copy marked with the date of filing.

(3) Appeals or complaints hand delivered to the SPB during regular business hours will be filed on the date received.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 52.5 Requirements and Method of Delivery for Filing All Other Papers with the Appeals Division

(a) After an appeal or complaint has been filed with the Appeals Division for review, investigation or hearing, all papers thereafter shall be filed with the Appeals Division, except as provided for in subdivision (b).

b) The first page of each paper filed shall include the following:

- (1) The name, address, and telephone number of the person filing the paper, including the State Bar number if the person filing the paper is an attorney;
 - (2) A caption setting forth the title of the case, including the names of the Appellant(s) and the Respondent(s);
 - (3) The SPB case number, if assigned;
 - (4) A brief title describing the paper filed; and
 - (5) The date(s) of the hearing and any future prehearing or settlement conferences, if known.
- (c) Methods of Delivery for Filing All Other Papers with the Appeals Division
- (1) All other papers delivered by electronic mail (e-mail), will be filed on the date received by SPB.
 - (2) All other papers delivered by the U.S. Postal Service are filed on the date received by the SPB. An Appellant or Complainant may obtain proof of the filing of the appeal or complaint by submitting either an extra copy of the appeal or complaint or the first page only, with a self-addressed, return envelope, postage prepaid. The Appeals Division shall return the copy marked with the date of filing.
 - (3) Appeals or complaints hand delivered to the SPB during regular business hours will be filed on the date received.

Note: Authority cited: Section 18701, Government Code. Reference: 18675, Government code.

§ 52.6 Right to Respond to Proposed Personnel Action

- (a) At least five working days before the effective date of a proposed adverse action, rejection during the probationary period, or non-punitive termination, demotion, or transfer under Government Code section 19585, the appointing power, as defined in Government Code section 18524, or an authorized representative of the appointing power shall give the employee written notice of the proposed action. At least 15 calendar days before the effective date of a medical termination, demotion, or transfer under Government Code section 19253.5 or an application for disability retirement filed pursuant to Government Code section 19253.5(i)(1), the appointing power or an authorized representative of the appointing power shall give the employee written notice of the proposed action. The notice shall include:

- (1) The reasons for such action;
- (2) A copy of the charges for adverse action;
- (3) A copy of all materials upon which the action is based;
- (4) Notice of the employee's right to be represented in proceedings under this section;
- (5) Notice of the employee's right to respond to the person specified in subsection (b); and
- (6) A statement advising the employee of the time within which to file an appeal with the SPB.

(b) The person whom the employee is to respond to in subsection (a)(5) shall be above the organizational level of the employee's supervisor who initiated the action unless that person is the employee's appointing power in which case the appointing power may respond to the employee or designate another person to respond.

(c) The procedure specified in this section shall apply only to the final notice of proposed action.

Note: Authority cited: Sections 18701 and 19574, Government Code. Reference: Sections 19173, 19253.5, 19574 and 19574.1, and 19585, Government Code and *Skelly v. SPB* (1975) 15 Cal. 3d 194.

§ 52.7 Request to File Charges Against State Employees

(a) Any request to file charges pursuant to Government Code section 19583.5, shall be filed by the requesting party with the Appeals Division of the SPB. The requesting party shall also serve the appropriate number of conforming copies on the appointing authority for each employee against whom disciplinary action is sought.

(b) Each request shall be in writing.

(c) Each request must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto. The accused employee has a right to provide an answer within 30 days of service of the request to file charges pursuant to Government Code section 19583.5.

(d) Each request must clearly state the legal cause(s) for discipline as set forth in Government Code section 19572.

- (e) Each request shall include a sworn statement, signed under penalty of perjury, that the contents of the request are true and correct.
- (f) Each request shall be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The requesting party shall submit a separate document with the request to file charges stating the reasons for good cause for the additional pages.
- (g) Where it does not appear that the material facts alleged are within the personal knowledge of the requesting party, the Appeals Division may require the requesting party to present supporting affidavits from persons having actual knowledge of the facts before acting upon the request.
- (h) Only after compliance with subdivisions (a) through (g) will the Appeals Division conduct an investigative review to determine whether the Board will give its consent to file charges.
- (i) If the Board approves the request after an investigative review, the parties will be notified that the request has been approved and that the matter will be scheduled for an evidentiary hearing before an ALJ. The Appeals Division will notify the parties of the time and location of the hearing.
- (1) The hearing shall be conducted in accordance with those regulations related to the adverse action hearing process pursuant to Sub-Article 6, beginning with section 56.1. During the hearing, the requesting party shall bear the burden of proving the allegations contained in the request by a preponderance of the evidence.
- (2) No disciplinary action shall be imposed on the employee until after the completion of the hearing, and only upon a finding by the Board that disciplinary action is warranted against the employee.
- (3) In those instances where the Board finds that disciplinary action is warranted against the employee, the Board shall notify the employee's appointing authority of the disciplinary action to be imposed on the employee. The appointing authority shall thereafter cause the disciplinary action mandated by the Board to be implemented against the employee within a reasonable period of time, not to exceed two weeks. The employee shall not be entitled to a right to respond pursuant to section 52.6. Within 30 days after a copy of the Board's decision is served upon the parties, either party may petition the Board for rehearing of the decision, pursuant to Government Code section 19586.

Note: Authority cited: Section 18701, Government Code. Reference: Section 19583.5, Government Code.

§ 52.8 Pleadings; Notice of Defense; Withdrawal of Notice of Defense

(a) When a party amends a pleading, including a Notice of Adverse Action amended in accordance with the provisions of Government Code section 19575.5, the party shall serve on all other parties and promptly file with the Appeals Division a complete, new pleading incorporating the amendments. The new pleading shall be titled a "First Amended" pleading, and subsequent amended pleadings shall be titled consecutively. If the amendments are made during the hearing, the party shall use highlighting or any other effective method to identify the changes made to the pleading. The ALJ, or the Hearing Officer, may allow exceptions for minor amendments during the hearing.

(b) The SPB prefers amended to supplemental pleadings. However, if a party issues a supplemental pleading, the party shall serve on all other parties and promptly file with the Appeals Division, the supplemental pleading, which shall be titled a "First Supplemental" pleading. Subsequent supplemental pleadings shall be titled consecutively.

(c) A party who withdraws a notice of defense, a request for hearing, or an asserted special defense, shall immediately notify the Appeals Division and all other parties in writing.

(d) When an Appellant or Complainant withdraws a request for hearing, the appeal or complaint will be deemed to be dismissed.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 52.9 Right to Representation; Notice of Representation and Withdrawal of Counsel or Other Representative

(a) Any party may be represented by counsel or any other person or organization of the party's choice in any hearing or investigation conducted pursuant to this article.

(b) Any counsel or other representative who has assumed representation of a party in any case submitted for hearing before the SPB shall give written notice to the Appeals Division if no presiding officer has been assigned, and written notice to all parties of his or her name, address, telephone number and fax number (if any) and the name of the represented party, within a reasonable time after assuming representation.

(c) Any counsel or other representative may withdraw as counsel or representative of record by giving written notice to the Appeals Division if no presiding officer has been assigned and written notice to all parties of the

withdrawal. The written notice shall include the last known address of the formerly represented party.

(d) Upon withdrawal by counsel or other representative:

- (1) The SPB retains jurisdiction over the case;
- (2) The formerly represented party bears the burden of keeping the SPB and all parties informed of a current address for purposes of service. If written notice of change of address is not given, any party may serve the formerly represented party at the party's last known address; and
- (3) The formerly represented party is responsible for preparation and representation throughout the remainder of the case, unless and until such party retains new counsel or other representative.

(e) Withdrawal or change of counsel or other representative does not alone constitute grounds for continuance of any previously scheduled proceeding in the case.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 52.10 Service; Proof of Service

(a) Service of subpoenas and subpoena duces tecum shall be made by personal service, or by United States mail with postage fully prepaid, certified with return receipt requested.

(b) Service of all other documents shall be made pursuant to sections 1012, 1013, and 1013a of the Code of Civil Procedure.

Note: Authority cited: Sections 18211, 18214, 18701, Government Code. Reference: Sections 415.30, 1008, 1012, 1013, Code of Civil Procedure; Sections 89538, 89541, Education Code; Sections 11440.20(b), 18575, 18672, 19058, 19083, 19100.5, 19173, 19243.4, 19253.5, 19574, 19585, 19590, 19803, 19889.2, Government Code.

ARTICLE 3. ASSIGNMENT OF APPEALS OR COMPLAINTS

§ 53.1 Appeals or Complaints Assigned to Informal Hearing Process

(a) Unless otherwise assigned, the following matters will be assigned to the informal hearing process:

- (1) Appeals from psychological and medical disqualification.
- (2) Appeals from voided civil service appointments.
- (3) Appeals from denial to take state civil service examination or be certified to any position in state civil service, pursuant to section 211.
- (4) Whistleblower retaliation complaints not consolidated with other appeals assigned to the evidentiary hearing process.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 53.2 Appeals or Complaints Assigned to Investigative Process

(a) Unless otherwise assigned, the following matters will be assigned to the investigative review process:

- (1) Complaints of discrimination, harassment, retaliation, or denial of reasonable accommodation for a known physical or mental disability, challenges to examination results, rejection of application for state civil service employment based upon minimum qualifications, certification withholds, and merit issue complaints.

(b) Unless otherwise required by law, or otherwise assigned, appeals of an adverse action where the penalty imposed is an official reprimand or other penalty equal to or less than a suspension without pay for five days or equal to or less than a one-step reduction in pay for four months will be assigned to the investigatory hearing process.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 53.3 Appeals or Complaints assigned to the Evidentiary Hearing Process

(a) Unless otherwise required by law, or otherwise assigned, the following shall be assigned to the full evidentiary hearing process:

- (1) Approved requests to file charges pursuant to Government Code section 19583.5.
- (2) Appeal of an adverse action pursuant to Government Code section 19575 or 19590 where the penalty imposed is greater than a suspension without pay for five days or a one-step reduction in pay for four months.

(3) Appeal of rejection during probationary period.

(4) Any other appeal or complaint deemed appropriate by the Chief ALJ, Executive Officer, the Board, or its President.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 53.4 Reassignment of Appeals

Except as otherwise provided by law, the Board, the Executive Officer, or the Chief ALJ may reassign an appeal to any process.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

ARTICLE 4 INFORMAL HEARING PROCESS

§ 54.1 Informal Hearing Process

(a) For those appeals assigned to hearing before a Hearing Officer, the Hearing Officer shall have the authority to administer oaths, subpoena and require the attendance of witnesses and the production of books or papers. The Hearing Officer shall have the sole discretion to determine whether the parties to the hearing shall have the authority to call and examine witnesses. The Hearing Officer shall have the authority to take official notice of those matters specified in Government Code section 11515, in accordance with the provisions of that section.

(b) Failure of any party to proceed at hearings presided over by a Hearing Officer shall be deemed a withdrawal of the action or appeal unless the hearing is continued for good cause.

(c) The provisions of section 59.1 through 59.4 shall apply to hearings conducted by Hearing Officers except that all motions or petitions filed with the Appeals Division pursuant to those regulations shall be directed to the attention of the Chief ALJ and not the Hearing Officer.

(d) The hearing shall be calendared for no more than 2 hours, except for Whistleblower Retaliation hearings which will be calendared for no more than 4 hours.

(e) The Hearing Officer has discretion to ask clarifying questions of the witnesses or the parties either during or at the conclusion of each party's case-in-chief and has sole discretion to extend additional time to each of the parties.

(f) The Hearing Officer is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the hearing in such a manner as necessary to reach a just and proper decision. Relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(g) Declarations/affidavits made under penalty of perjury will be admissible even though they are technically hearsay, and may be relied upon by the Hearing Officer to make a finding of fact.

(h) The Hearing Officer shall prepare a proposed decision which will be forwarded to the Board.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675 and 19570, Government Code.

ARTICLE 5. INVESTIGATIVE PROCESS

§ 55.1 Investigative Review

(a) For those appeals assigned to review by an Investigative Officer pursuant to section 53.2, the Investigative Officer shall have the authority to interview witnesses, administer oaths, subpoena, and require the attendance of witnesses and the production of books or papers. The Investigating Officer shall also have the authority to take official notice of those matters specified in section 11515 of the Government Code.

(b) No hearing shall be conducted concerning those appeals assigned to investigative review. No party to the appeal shall be authorized to conduct discovery concerning those issues subject to investigative review. No party to the appeal shall be authorized to call and examine witnesses as part of the investigative review. The investigative review shall be based upon any documentary or other information deemed relevant by the Investigative Officer.

(c) The Investigative Officer is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the investigatory review in such a manner as necessary to reach a just and proper decision. Relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(d) Declarations/affidavits made under penalty of perjury will be admissible even though they are technically hearsay, and may be relied upon by the Investigative Officer to make a finding of fact.

(e) Upon conclusion of the Investigatory Review, the Executive Officer, or his or her designee shall either:

(1) Present a recommended decision to the Board, or

(2) Render a decision.

Note: Authority cited: 18701, Government Code. Reference: 18675, Government Code.

§ 55.2 Investigatory Hearings

(a) Failure of any party to proceed at the investigatory hearing shall be deemed a withdrawal of the action or appeal, unless the investigatory hearing is continued for good cause.

(b) The investigatory hearing shall be calendared for no more than 6 hours. Each party will be allotted a total of 3 hours to be allocated at that party's discretion for presentation of its case, including examination and cross-examination of witnesses, presentation of declarations, documentary evidence, and exhibits, and presentation of arguments. While use of the time allotted is at each party's discretion, the suggested format for the hearing is as follows: 10 minutes each for opening statements, 120 minutes each to call witnesses and present declarations, documentary evidence and exhibits, 30 minutes each for cross-examination of the opposing party's witnesses, and 20 minutes each for closing arguments. The ALJ is authorized to conduct a full evidentiary hearing in an appeal defined in this regulation upon mutual agreement of the parties or, upon motion by one of the parties, if the ALJ finds it in the interest of justice to do so.

(c) The ALJ has discretion to ask clarifying questions of the witnesses or the parties either during or at the conclusion of each party's case-in-chief and has sole discretion to extend additional time to each of the parties.

(d) The ALJ is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the investigatory hearing in such a manner as necessary to reach a just and proper decision. Relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(e) Declarations/affidavits made under penalty of perjury will be admissible even though they are technically hearsay, and may be relied upon by the ALJ to make a finding of fact pursuant to section 11514 of the Government Code.

(f) The ALJ shall prepare a short-form proposed decision which would be forwarded to the Board within 30 days of the investigatory hearing. The decision will include enough information to allow the Board to exercise its constitutional authority to review disciplinary actions, such as (1) introduction; (2) factual allegations sustained and not sustained, referring to the Notice of Adverse Action; (3) legal causes, sustained and not sustained, referring to the Notice of Adverse Action and any other applicable legal authority; (4) penalty including brief references to any applicable legal authority; and (5) any finding of fact that the ALJ decides is necessary to highlight.

(g) Absent Board rejection of the proposed decision, each case should be opened and closed in no more than 180 days.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19570 and 19576, Government Code.

ARTICLE 6. EVIDENTIARY HEARING PROCESS

Subarticle 1. ADMINISTRATIVE LAW JUDGES

§ 56.1 Authority of ALJ

When an ALJ has been assigned to evidentiary or investigatory hearing matters, an ALJ is fully authorized and empowered to control the litigation before them and may grant or refuse extensions of time, receive evidence, hold appropriate conferences before or during hearings, rule upon all objections or motions, hear argument, and fix the time for the filing of briefs. An ALJ is fully authorized and empowered to perform any and all other acts in connection with such proceedings that may be authorized by law or these regulations, including those acts necessary to ensure due process for all parties, and has wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed .

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code; *Mileikowsky v Tenent Healthsystem* (2005) 128 Cal.App.4th 531, 560.

§ 56.2 Peremptory Strike

(a) A party is entitled to one peremptory strike (disqualification without cause) of an ALJ assigned to a hearing. In no event shall a peremptory strike be allowed if it is made after the hearing has commenced.

(b) A peremptory strike shall be:

(1) Filed with the Appeals Division and directed to the Chief ALJ within 20 days of the date that the Appeals Division mails a letter of acknowledgement of the filing of the matter together with a list of the available ALJ's to all the parties;

(2) Filed by a party, or a party's attorney or authorized representative; and

(3) Made in writing in substantially the following form:

"I am a party to [CASE NAME AND NUMBER] and am exercising my right to a peremptory strike regarding ALJ [NAME], pursuant to section 56.2."

(d) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under section 56.3, or any other applicable provisions of law.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 56.3 Disqualification of ALJ, Hearing Officer, or Board Member for Cause

(a) An ALJ or Hearing Officer shall voluntarily disqualify him or herself and withdraw from any case in which there are grounds for disqualification, including disqualification under section 11425.40 of the Government Code. The parties may waive the disqualification by a writing that recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the ALJ, and included in the record.

(b) In accordance with the provisions of section 11425.40 of the Government Code, any party may request the disqualification of any ALJ or Hearing Officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the ALJ or Hearing Officer should be disqualified. The issue shall be determined by the ALJ or Hearing Officer.

Note: Authority cited: 18701, Government Code. Reference: 18675, 11425.40, 11430.60, and 11512(c), Government Code.

§ 56.4 Ex Parte Communications

(a) While any proceeding is pending before the Board, an ALJ, a Hearing Officer, an Investigative Officer, or any other designated representative of the Board, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from any party, party representative, or interested third party, without notice and opportunity for all parties to participate in the communication.

(1) Nothing in this section precludes a communication made on the record at the hearing.

(2) For the purpose of this section, a proceeding is pending from the submission of an appeal to the Appeals Division.

(b) A communication otherwise prohibited under subdivision (a) is permissible in any of the following circumstances:

(1) The communication is required for disposition of an ex parte matter specifically authorized by statute; or

(2) The communication concerns a matter of procedure or practice.

(c) If, while the proceeding is pending, but before serving as the presiding officer, a person receives a communication of a type that would be in violation of this section if received while serving as the presiding officer, the person promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in subdivision (d).

(d) If a presiding officer receives a communication in violation of this section,

(1) The presiding officer shall make all of the following a part of the record in the proceedings:

(A) If the communication is written, the writing and any written response of the presiding officer to the communication; or

(B) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

- (2) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.
- (3) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:
- (A) The party shall be allowed to comment on the communication. The presiding officer shall have the discretion to permit either written or oral comment; and
 - (B) The presiding officer has the discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

- (e) Receipt by the presiding officer, other than the Board, of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

Note: Authority cited: Section 18701 Government Code. Reference: Sections 18675, 11430.10, 11430.20, 11430.30, 11430.40, 11430.50, and 11430.60, Government Code

Subarticle 2. Prehearing Provisions

§ 57.1 Prehearing/Settlement Conferences

- (a) After a case has been filed with the Appeals Division, the matter shall be scheduled for a prehearing/settlement conference, unless ordered otherwise.
- (b) The ALJ at the prehearing/settlement conference shall not preside as the ALJ at the evidentiary hearing unless otherwise stipulated by the parties.
- (c) Each Appellant and his or her representative, and each Respondent and his or her representative, shall appear in person at all prehearing/settlement conferences. Individually named Appellants and Respondents must also personally appear at all prehearing/settlement conferences.
- (d) Each party or representative who attends the prehearing/settlement conference shall be fully familiar with the facts and issues in the case. Respondents or their representatives must have full settlement authority, or be able to obtain authority immediately by telephone.

(e) A request to continue a prehearing/settlement conference shall be addressed to the Chief ALJ pursuant to section 60.2.

(f) Each party shall file a written prehearing/settlement conference statement with the Appeals Division 10 calendar days prior to the hearing that contains the following information:

(1) The identification by SPB Case Number of all appeals or complaints pending before the Appeals Division or the Board, arising out of the same transaction, occurrence, or series of transactions or occurrences.

(2) A brief summary of any stipulated facts.

(3) Identification of affirmative defenses to any claim.

(4) A current estimate of the time necessary to try the case.

(5) The identity of witnesses each party may call at the hearing, together with a brief statement of the content of each witness's expected testimony. Parties are not required to disclose any witness that will be called for rebuttal or impeachment purposes.

(6) The identity of any witness who may be called to testify who is an inmate of any correctional facility. In addition, at the discretion of the Chief ALJ, such individuals may be required to testify via closed circuit television, or by other electronic means.

(7) The name and address of each expert witness each party intends to call at the hearing, together with a brief statement of the opinion each expert is expected to give, and a copy of the current resume or curriculum vitae of each expert witness.

(8) A list of documentary exhibits each party intends to present at the hearing, and a description of any physical or demonstrative evidence. Parties are not required to disclose exhibits that will be used for rebuttal or impeachment purposes.

(9) A concise statement of any significant evidentiary issues to assist the ALJ in conducting the hearing.

(10) Failure to fully disclose all required items in the prehearing/settlement conference statement without good cause will, at the discretion of the ALJ, result in the exclusion or restriction of evidence at the hearing.

(g) All prehearing/settlement conference statements shall be served on all other parties 10 calendar days prior to the hearing, and shall be filed with the assigned ALJ at the pre hearing/ settlement conference.

(h) Each party shall bring a copy of the prehearing/settlement conference statement as well as a draft of any settlement proposal on a portable drive or in writing to the prehearing/settlement conference.

(i) Where a case cannot be settled at the prehearing/settlement conference, the ALJ may address such issues as:

- (1) Discovery disputes;
- (2) Preparation of stipulations;
- (3) Clarification of issues;
- (4) Rulings on identity and limitation of the number of witnesses;
- (5) Objections to proffers of evidence;
- (6) Order of presentation of evidence and cross-examination;
- (7) Rulings regarding issuance of subpoenas and protective orders; and
- (8) Any other matters that promote the orderly and prompt conduct of the hearing.

(j) Failure of any party to appear and/or proceed at a prehearing/settlement conference shall be deemed a withdrawal of the appeal or the action, unless the hearing is continued for good cause pursuant to section 58.3.

Notes: Authority cited: Section 18701, Government code. Reference: Sections 18675, 11511.5, and 11511.7, Government Code.

§ 57.2 Consolidated Proceedings; Separate Proceedings

a) When proceedings that involve a common question of law or fact are pending, the Chief ALJ or his designee on the judge's own motion, or on the motion of a party, may order a joint hearing of any or all matters at issue in the proceedings. The Chief ALJ or his designee may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) A party who brings a motion for consolidated proceedings or separate proceedings shall comply with section 60.1.

(c) Where a motion for consolidated proceedings or separate proceedings is made on the day of the hearing, the moving party must demonstrate that the issues were not discoverable at an earlier time.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

Subarticle 3. Hearings

§ 58.1 Waiver of Government Code Section 18671.1

(a) For any appeal pending before the Appeals Division, if the Appellant does not affirmatively waive the provisions of section 18671.1 of the Government Code, then the Appeals Division has the discretion to either set the matter for hearing at any location the Board determines will be able to hold the hearing in the most expeditious manner possible, or require the hearing to be held by telephonic conference call, or video conferencing pursuant to section 58.6 .

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18701, 18671.1 and 18675, Government Code.

§ 58.2 Requests for Priority Hearing in Appeals and Complaints from Dismissal

(a) For appeals and complaints involving the penalty of dismissal, where an evidentiary hearing has not commenced within 8 months of the filing of the appeal or complaint, an Appellant or Complainant may request a priority hearing with the Appeals Division. Requests for priority hearing shall be in writing, and shall be filed with the Appeals Division, with copies sent to all other parties.

(b) Upon a request for a priority hearing as provided in subdivision (a), the evidentiary hearing shall be scheduled to occur within 90 days of the request at an SPB hearing location designated by the Chief ALJ or his or her designee, and may where practicable, utilize an electronic proceeding as set forth in section 58.6, for all or part of the hearing.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 58.3 Dismissal of Appeals Not Brought to Hearing and Failure to Proceed

- (a) Any appeal assigned to the ALJ, hearing officer, Chief ALJ's designee, or presiding officer, shall be dismissed unless it is brought to hearing within three years after such appeal was filed with the Board. "Brought to hearing" means when the record is opened for the purpose of initiating the evidentiary hearing pursuant to section 51.2(i).
- (b) Failure of any party to proceed at a hearing or a prehearing/settlement conference, shall be deemed a withdrawal of the appeal or the action, unless the hearing is continued for good cause.

Note: Authority: Section 18701, Government Code. Reference: Section 18675(a) Government Code.

§ 58.4 Hearings are Public

Every appeal hearing, including the hearing of an adverse action appeal, shall be public, unless otherwise required by law to be closed to the public.

(a) A hearing shall be open to public observation. Nothing in this subdivision limits the authority of the presiding officer to order on the record, closure of a hearing or make other protective orders to the extent necessary or proper for any of the following purposes:

- (1) To satisfy the United States Constitution, the California Constitution, federal or state statute, or other law, including but not limited to laws protecting privileged, confidential, or other protected information.
 - (2) To ensure a fair hearing in the circumstances of the particular case.
 - (3) To conduct the hearing, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in section 4512 of the Welfare and Institutions Code, from intimidation or other harm, taking into account the rights of all persons.
- (b) To the extent a hearing is conducted by telephone, television, or other electronic means, subdivision (a) is satisfied if members of the public have an opportunity to be physically present at the place where the presiding officer is conducting the hearing.
- (c) This section does not apply to a prehearing conference or settlement conference, or proceedings for alternative dispute resolution.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 58.5 Exclusion of Witnesses

Upon the motion of any party, ALJ, hearing officer, Chief ALJ's designee, or presiding officer shall have the authority to exclude from the hearing room any witnesses not at the time under examination; but a party to the proceeding, or the party's counsel or other person representing a party, shall not be excluded. When a state agency is a party it is entitled to the presence of one other officer or employee in addition to its counsel or representative.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 58.6 Electronic Proceedings

(a) The presiding ALJ may, upon the motion of a party or upon the presiding ALJ's own motion, conduct all or part of a hearing by telephonic conference call or video conference if each participant in the proceeding has an opportunity to participate in and hear the entire proceeding while it is taking place and to observe exhibits.

(b) If a party objects, the presiding ALJ may proceed upon a finding that no party to the proceeding will be prejudiced by all or part of the hearing being conducted by telephone or other electronic means.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 58.7 Request for Security

(a) Any party or participant in an evidentiary hearing may request security for the hearing. The request shall be made as soon as the need for security is known. The request shall be filed with the Appeals Division and directed to the Chief ALJ or the assigned ALJ. To ensure that appropriate safety measures are arranged, the person requesting security shall inform the Chief ALJ, or the assigned ALJ, the nature of the security risk.

(b) The Chief ALJ or his or her designee will evaluate the request for security and make the decision whether to provide security. Costs for security are reimbursed pursuant to Government Code section 18671.2.

(c) If the request for security is made without sufficient time for appropriate security personnel to be procured, the Chief ALJ, or the assigned ALJ, has the discretion to continue the proceeding.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code; Section 754, Evidence Code and Judicial Rule 989.3.

§ 58.9 Interpreters

(a) As used in this section, “language assistance” means oral interpretation or written translation into English of a language other than English or of English into another language for a party or witness who cannot speak or understand English or who can do so only with difficulty.

(b) Nothing in this section limits the application or effect of section 754 of the Evidence Code to interpretation for a deaf or hearing impaired party or witness in an adjudicative proceeding.

(c) All hearings shall be conducted in English. If a party or the party’s witness needs language assistance, that party or the party’s witness must notify the Chief ALJ or the assigned ALJ, no later than 15 days before the hearing, that an interpreter is going to be utilized. Such notification must identify the interpreter, and provide evidence of certification.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, 11435.05, 11435.10, 11435.20, and 11435.25, Government Code.

§ 58.10 Official Notice

Official notice may be taken of those matters specified in section 11515 of the Government Code by the ALJ, Chief ALJ’s designee, hearing officer, or presiding officer in any hearing or investigative review, in accordance with the provisions of that Section.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675 and 11515, Government Code.

§ 58.11 Notice of Settlement

(a) The parties shall promptly notify the Appeals Division of any resolution that terminates a case assigned for hearing. The Appeals Division shall vacate all hearing dates upon receipt of a written request signed by all parties notifying the Appeals Division that the appeal or complaint, or personnel action has been withdrawn through settlement.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

Subarticle 4. Discovery

§ 59.1 Request for Discovery; Statements; Writings; Investigative Report; Witness List

(a) Except as otherwise provided in subdivision (a) (1), each party to an appeal or complaint which is scheduled for a hearing is entitled to serve a request for discovery on any other named party to the complaint or appeal. All requests for discovery shall be served on the responding party no later than 90 days after filing the appeal or complaint with the Board. The right to inspect documents and interview witnesses provided for under Government Code section 19574.1 is separate and distinct from a request for discovery expressed in this section and is not governed by the provisions of this section

(1) For appeals from Notice of Adverse Action served pursuant to Government Code section 19574 or 19590, a request for discovery may only be served by the Appellant or the Appellant's representative upon the Respondent as provided for in subdivision (a). However, a Respondent may serve a request for discovery on Appellant in said appeal no later than 15 days after the Prehearing/Settlement Conference solely for the purpose of obtaining information relevant to any affirmative defense raised by Appellant in the Prehearing/Settlement Conference statement.

(b) Any party seeking discovery beyond the 90 days from the filing of an appeal or complaint with the Board may do so only upon an order issued by the Chief ALJ or his or her designee. The party seeking discovery must file a petition showing good cause why they exceeded the 90 days, and shall attach a copy of the proposed discovery request. The matter will be decided upon the moving papers by the assigned ALJ, in his or her discretion, that such additional or late requests for discovery should be permitted in the furtherance of justice. No hearing on the motion will be scheduled.

(c) A request for discovery may include the following:

- (1) Each party to the appeal or complaint is entitled to request and receive from any other party to the appeal or complaint the names and home or business addresses of percipient witnesses to the event(s) in question, to the extent known to the other party and of individuals who may be called as witnesses during the course of the hearing, except to the extent that disclosure of the address is prohibited by law. The responding party may, at his or her discretion, provide either the home or business address of the witness, except to the extent that disclosure of the address is prohibited by law;
 - (2) Statements, as defined in Evidence Code section 225, to the extent such statements exist as of the date of the request, of witnesses proposed to be called during the hearing by the party and of other persons having personal knowledge of the act, omission, event, decision, condition, or policy which are the basis for the appeal. The responding party shall, upon a showing of good cause and subject to the discretion of the administrative law judge, subsequently amend their witness list if they intend to call additional witnesses not previously disclosed;
 - (3) All writings, as defined in Evidence Code section 250, that the responding party proposes to enter into evidence. The responding party shall, upon a showing of good cause and subject to the discretion of the ALJ, subsequently provide the requesting party with additional writings that it proposes to enter into evidence;
 - (4) Any other writing or thing that is relevant to the appeal or complaint; and
 - (5) Investigative reports made by or on behalf of any party pertaining to the act, omission, event, decision, condition or policy which is the basis for the appeal or complaint, including all supporting materials, pertaining to the subject matter of the proceeding, to the extent that these reports: (A) contain the names and home or business addresses of witnesses or other persons having personal knowledge of the facts, omissions or events which are the basis for the proceeding, unless disclosure of the address is prohibited by law, or (B) reflect matters perceived by the investigator in the course of his or her investigation, or (C) contain or include by attachment any statement or writing described in subdivision (c)(5) (A) to (B), inclusive, or summary thereof.
- (d) All parties receiving a request for discovery shall produce the information requested, or shall serve a written response on the requesting party clearly specifying which of those requested matters will not be produced and the basis for the non-production, within 30 days of receipt of the discovery request. The parties may extend the deadline by mutual agreement, by no more than 30 days.

(1) A responding party may object to any item or category demanded in a request for discovery in whole or in part. The objection must:

- (A) Identify with particularity the specific document or evidence demanded to which the objection is made; and
- (B) Set forth the specific ground for objection, including claims of privilege, work product, or right of privacy protection.
- (C) If an objection is based on a claim of privilege, the particular privilege invoked shall be stated.
- (D) If an objection is based on a claim that the information sought is protected work product, that claim shall be expressly asserted.

(2) If a responding party fails to serve a timely response to a request for discovery:

- (A) The responding party waives any objection to the request for discovery, including one based on privilege or on the protection for work product.
- (B) At the discretion of the assigned ALJ, a responding party may be relieved from this waiver based upon a determination that both of the following conditions are satisfied:
 - (i) The responding party has subsequently served a response that is in substantial compliance with the request for discovery, and
 - (ii) The responding party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(e) Failure to produce information or material responsive to a request for discovery may result in the exclusion of a witness or other evidence at the discretion of the assigned ALJ. A responding party may, at the discretion of the assigned ALJ, and upon a showing of good cause amend a response to request for discovery no later than 30 days prior to the evidentiary hearing.

Note: Authority cited: Sections 18701 and 18214, Government Code.
Reference: Section 87164, Education Code; Sections 225 and 250, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

§ 59.2 Depositions

(a) On verified petition of any party, the Chief ALJ or the assigned ALJ may order the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed in Government Code section 18673.

(b) Any party who requests to submit a deposition in lieu of testimony at the hearing shall identify those portions of the deposition that are relevant to the issues of the case.

(c) At the discretion of the Chief ALJ or the assigned ALJ as set forth in section 56.1, in lieu of a deposition, witness testimony may be conducted by video conferencing.

Note: Authority cited: 18701, Government Code. Reference: Sections 11511, 18673, and 18675, Government Code.

§ 59.3 Subpoenas

(a) Licensed members of the California State Bar in a representative capacity, may issue subpoenas and subpoenas duces tecum to compel attendance at a hearing, so long as the individual being served does not reside more than 100 miles from the location where the hearing or investigation is to be held, or more than 100 miles from the location where the witness testifies or is interviewed if testimony or a statement is taken electronically pursuant to section 58.6, whichever applies.

(1) If a witness resides more than 100 miles from the hearing location, the party intending to serve the subpoena must submit an affidavit attesting to the materiality of the witness to the Chief ALJ or his or her designee.

(b) Subpoenas and subpoenas duces tecum issued pursuant to (a)(1), or at the request of a person not licensed as a member of the State Bar, shall be issued by the Chief ALJ or his or her designee.

(c) Subpoenas and subpoenas duces tecum issued under this section shall be on a form provided by the Board, (SPB-76, Revised 12/09), attached as Appendix "B" to these regulations.

(d) A person served with a subpoena or subpoena duces tecum may object to its terms by a motion for a protective order and/or for a motion to quash. The motion shall be made within 15 days after receipt of the subpoena

(e) Witness fees are to be remitted pursuant to Government Code section 18674.

Note: Authority: Section 18701, Government Code. Reference: Sections 18672 through 18675, Government Code.

§ 59.4 Abuse of the Discovery Process; Sanctions

(a) Abuse of the discovery process includes, but is not limited to, the following:

- (1) Persisting, over objection and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery.
- (2) Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.
- (3) Failing to respond or to submit to an authorized method of discovery.
- (4) Making, without substantial justification, an unmeritorious objection to discovery.
- (5) Making an evasive response to discovery.
- (6) Disobeying an order to provide discovery.
- (7) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery.
- (8) Failure to meet and confer for an informal resolution of a discovery dispute.

(b) At the discretion of the Chief ALJ or the assigned ALJ, any party who is found to have abused the discovery process as set forth in subdivision (a) shall be subject to sanctions as ordered by the Chief ALJ or the assigned ALJ. Such sanctions may include:

- (1) An order prohibiting the introduction of designated matters into evidence by the abusing party;
- (2) An order establishing designated facts, claims, or defenses against the abusing party; and/or

- (3) Any other order as the Chief ALJ or assigned ALJ may deem appropriate under the circumstances.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

Subarticle 5. Law and Motion

§ 60.1 Law and Motion; Procedures; Motions

(a) The following motions shall be filed with the Appeals Division no later than 90 days from the date the appeal or complaint was filed with the SPB:

- (1) Failure to State a Cause of Action: Will only be heard where it pertains to Discrimination, Harassment, Retaliation, and Whistleblower Retaliation Cases.
- (2) Motion to Dismiss;
- (3) Motion to Strike;
- (4) Consolidation or severance of matters for hearing pursuant to section 57.2.

(b) The following motions shall be filed with the Appeals Division within 10 days subsequent to learning of the basis for the motion:

- (1) Motions to compel deposition of an unavailable witness pursuant to section 60.3;
- (2) Motion for Change of Venue.

(c) Prior to the filing and service of any law and motion matter under this section, the moving party must secure a date and time for the hearing on the motion from the Appeals Division Calendar Clerk, and this information shall be included on all copies of the motion filed with the SPB and served on all parties. The moving party shall file their motion with the Chief ALJ or his or her designee, and serve all parties no later than 30 days prior to the hearing date scheduled with the Appeals Division Calendar Clerk.

(d) Motions, Oppositions to Motions, and Replies to Oppositions must be filed with the Chief ALJ or his or her designee, and served on all parties pursuant to section 52.10.

(e) Oppositions to Motions must be filed with the Chief ALJ or his or her designee, and served on all parties no later than 15 days after service of the motion.

(f) Replies to Oppositions must be filed with the Chief ALJ or his or her designee, and served on all parties no later than 8 days after service of the Opposition.

(g) If the motion is to be heard via a telephonic conference call, the party requesting the telephonic conference call is responsible for making arrangements with a telephone service provider, such that the assigned ALJ shall be provided the opportunity to call into the conference call at the designated date and time of the hearing. Calling instructions shall be provided to the Appeals Division within 5 days prior to the hearing.

(h) Motions and Oppositions shall be limited to 15 pages. In addition, the motion may be supported by such documentation as affidavits, declarations, depositions, and matters of which official notice shall or may be taken. Replies to Oppositions shall be limited to 5 pages.

(1) Where a motion or opposition is supported by additional documentation, the motion must specifically identify the relevant portions of each piece of documentation. Failure to identify the relevant portions may, at the discretion of the Chief ALJ or his or her designee, result in the supporting documentation not being considered.

(i) Failure to comply with the requirements of subdivisions (a) through (h) may, in the discretion of the assigned ALJ, constitute sufficient ground for denial of the motion.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

§ 60.2 Motions for Hearing Continuances

(a) Motions for continuance of a hearing shall be considered only upon the moving papers. No hearing on the motion will be scheduled.

(b) Grounds for continuance

(1) Motions for continuances based upon good cause shall be considered only if filed no later than 10 days subsequent to learning of the basis for a continuance. Circumstances that may indicate good cause include:

(A) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;

(B) The unavailability of a party or counsel because of death, illness, or other excusable circumstances;

(C) The substitution of counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;

(D) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts.

(2) Motions for continuances by mutual agreement of the parties shall be considered only if filed no later than 90 days prior to the hearing. The motion must be signed by all parties or their representatives.

(3) When the acts or omissions that lead to an adverse action or rejection also lead to criminal charges being filed against the Appellant, continuances shall be granted when the parties mutually concur to allow for completion of the criminal proceedings, subject to the three year limitation in section 58.3.

(c) Requirements for filing a motion for continuance

(1) The moving party must meet and confer with all other parties on the motion prior to filing the motion with the Appeals Division, directed to the Chief ALJ or his or her designee pursuant to section 52.5.

(2) The motion shall include all facts which support the request to continue the hearing, as well as the following information;

(A) The case name and SPB case number;

(B) The date, time and place, and type of hearing to be continued;

(C) The address and daytime telephone number of the moving party and all other parties;

(D) A list of all previous motions to continue the hearing and the dispositions;

(E) The positions of all nonmoving parties to the motion;

(F) Any future dates when the parties are unavailable for hearing over the next three months and any preferred future hearing dates;

(G) If Appellant is the moving party, whether Appellant waives the provisions of section 18671.1 of the Government Code; and

(H) All factual assertions must be accompanied by a declaration under penalty of perjury, that the facts are true and correct.

(d) In ruling on a motion for continuance, the ALJ shall consider all the facts and circumstances that are relevant to the determination. These may include:

- (1) The proximity of the hearing date;
- (2) Whether there was any previous continuance, extension of time, or delay of a hearing due to any party;
- (3) The length of the continuance requested;
- (4) The prejudice that parties or witnesses will suffer as a result of the continuance;
- (5) The hearing calendar and the impact of granting a continuance on other pending cases;
- (6) Whether counsel is engaged in another hearing;
- (7) Whether all parties have stipulated to a continuance;
- (8) Whether the interests of justice are best served by a continuance, by the hearing of the matter, or by imposing conditions on the continuance; and
- (9) Any other fact or circumstance relevant to the fair determination of the motion.

Note: Authority: Section 18701, Government Code. Reference: Section 18675, Government Code

§ 60.3 Motion to Compel Discovery

(a) A petition or motion to compel a request to inspect documents under Government Code section 19574.1 is governed by the procedures provided in Government Code section 19574.2. Motions to compel a request for discovery issued pursuant to section 59.1 are governed by the procedures stated in this section 60.3, subdivisions (b) through (e).

(b) A party may serve and file with the Appeals Division a motion to compel discovery, naming as responding party any party who has refused or failed to provide discovery as required by section 59.1. A copy of the motion shall be served on the responding party on the same date the motion is filed with the Appeals Division. The motion shall be served upon the responding party and filed with the Appeals Division within 14 days after the responding party first evidenced his or her failure or refusal to comply with section 59.1.

(c) The matter will be decided upon the moving papers, as well as any responses and replies unless ordered otherwise.

(d) The motion shall state facts showing the responding party failed or refused to comply with section 59.1, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the responding party for an informal resolution of the issue has been made, and the grounds of the responding party's refusal.

(e) Motions, responses and replies shall be limited to 15 pages. In addition, the motion may be supported by such documentation as affidavits, declarations, depositions, and matters of which judicial notice shall or may be taken.

(1) Where a motion or opposition is supported by additional documentation, the motion must specifically identify the relevant portions of each piece of documentation. Failure to identify the relevant portions may, at the discretion of the Chief ALJ or his or her designee, result in the supporting documentation not being considered.

(2) The responding party shall have a right to file an opposition to the motion within 15 days of service of the motion. Any reply to the opposition shall be filed with the Chief ALJ or his or her designee and served on the moving party within 10 days of service of the opposition motion.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

ARTICLE 7. NAME CLEARING HEARINGS

§ 63.1 Name Clearing Hearing Procedures

(a) In those situations where an employee's Limited Term (LT), Seasonal, or Temporary Authorization (TAU) appointment is terminated for fault, based on charges of misconduct which might stigmatize his or her reputation, or seriously impair his or her opportunity to earn a living, or which might seriously damage his or her standing or association in his community, the employee shall be entitled to file a request for a "Name Clearing" Hearing to be conducted by the appointing authority.

(b) Any Name Clearing Hearing conducted by an appointing authority should, at a minimum, conform to the following requirements:

(1) The employee should file his or her request with the appointing authority within five business days of the effective date of the notice of termination;

(2) The appointing authority should conduct the hearing and issue its decision within 21 days of the effective date of the notice of termination, unless the employee agrees to a hearing to be conducted at a later date;

(3) The employee should be entitled to be represented by a representative of his or her choosing;

(4) The appointing authority's representative should be a neutral, impartial decision-maker, who has the authority to sustain the termination, or revoke the "for fault" designation concerning the appellant's termination;

(c) Upon conclusion of the hearing, the appointing authority's representative shall determine whether the allegations contained in the notice of termination are supported. If the allegations are not supported, a decision shall be issued to reflect that the employee's termination was without fault. Such a decision will not, however, require that the appellant be reinstated to his or her position, except as otherwise required by law.

(d) The Board does not conduct Name Clearing Hearings, nor is there any right of appeal to the Board from a decision by an appointing authority, except as otherwise required by law.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

ARTICLE 8. DISCRIMINATION COMPLAINT PROCESS

§ 64.1 Discrimination; Harassment; Retaliation; Denial of Reasonable Accommodation

Any state civil service employee, or applicant for state civil service employment, who reasonably believes that he or she has been subjected to discrimination, harassment, retaliation, or denied reasonable accommodation for a known physical or mental disability in state employment, on any basis listed in section 19701 or 19702 of the Government Code, or subdivision (a) of section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, may file a complaint by complying with the provisions of Sections 64.2 through 64.6.

Note: Authority cited: Section 18701, Government Code. Reference: Sections, 18675, 19701 and 19702, Government Code.

§ 64.2 Prerequisites for Filing a Discrimination Complaint with the Board

Any state civil service employee or applicant for state civil service employment who reasonably believes that he or she has been subjected to discrimination, harassment, retaliation, or denied reasonable accommodation for a known physical or mental disability in employment shall first file a written complaint with the appointing power's Equal Employment Opportunity Office, or other office or individual designated by the appointing power to investigate such complaints, prior to filing a discrimination complaint with the SPB.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702 1, Government Code.

§ 64.3 Appointing Power Discrimination Complaint Process

(a) Each appointing power shall establish in writing its own internal discrimination complaint process through which a complainant may obtain review of, and a written response to, an allegation of discrimination, harassment, retaliation, or denial of reasonable accommodation for a known physical or mental disability.

(b) Each complaint filed with the appointing power shall be in writing and shall state the facts upon which the complaint is based, and the relief requested, in sufficient detail for the appointing power to understand the nature of the complaint and to determine the individuals involved. The complained of act, omission, event, decision, condition, or policy must have occurred no more than one year prior to the date that the complaint is filed with the appointing power.

This period may be extended by not more than 90 days in those cases where the complainant first obtained knowledge of the facts of the alleged discrimination more than one year from the date of its occurrence.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

§ 64.4 Response of Appointing Power to Discrimination Complaint

(a) The appointing power shall provide the complainant a written decision within 90 days of the complaint being filed. If the appointing power has not completed its review and/or is unable to provide a written decision within the 90 day time period, the appointing power shall, within that same time period, inform the complainant in writing as to the reason(s) it is unable to issue its decision within the required time period.

(b) Upon the expiration of the 90 day time period stated in this section, Complainant may thereafter file a discrimination complaint with the SPB as provided in section 64.5. However, a discrimination complaint may not be filed with the SPB more than 150 days after the complainant filed his or her complaint of discrimination with the appointing power.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

§ 64.5 Requirements for Filing Discrimination Complaint with the SPB

Any complaint to the SPB alleging discrimination, harassment, retaliation, or denial of reasonable accommodation for a known physical or mental disability shall be subject to the following filing requirements:

(a) The complaint shall be filed with the Appeals Division within 30 days of the date the appointing power served its decision concerning the complaint of discrimination on the Complainant. If the appointing power has failed to provide a decision to the Complainant within 90 days of the complaint being filed, the Complainant may file a complaint with the Appeals Division within 150 days of the date the Complainant filed his or her complaint of discrimination with the appointing power.

(b) The Complainant shall submit to the Appeals Division a complaint and any attachments, and enough copies for the SPB to serve each entity and person alleged to have engaged in discriminatory conduct and against whom damages and/or disciplinary action is sought.

(c) The complaint shall be in writing, and shall:

(1) identify the facts that form the basis for the complaint, including, but not limited to the specific protected classification or activity as set forth in sections 19701 or 19702 of the Government Code; all discriminatory acts experienced by the Complainant, including the date that each act occurred; the name and job title of each person who allegedly subjected Complainant to each discriminatory act; and all information that the Complainant possesses that shows that the complained of employment action(s) were the result of discriminatory conduct;

(2) identify all Respondents known to the complainant (i.e. the appointing power as well as all state employees alleged to have discriminated against the complainant), and identify the business address of each Respondent named as a party to the complaint. Unless the complainant names some other known Respondent, the Complainant's appointing power shall be considered the sole Respondent;

(3) have attached a copy of the Complainant's complaint of discrimination filed with the appointing power, together with a copy of the decision or other response of the appointing power to the complaint. If the appointing power failed to provide the Complainant with a written decision or other response to the discrimination complaint within the time period set forth in section 64.4, the Complainant shall so state in the complaint;

(4) specify the relief and/or remedies sought by the Complainant; and

(5) be limited to a maximum of 15 pages of double-spaced typed or printed text. Additional pages may be allowed upon a showing of good cause. The Complainant shall submit a separate document with the appeal stating the reasons for good cause. The 15 page limit does not apply to any documents attached to the appeal pursuant to the requirements of subdivision (3) of this section, or any other exhibits.

(d) The above procedures do not apply in those cases where a complaint raises discrimination as an affirmative defense to any case scheduled for hearing. A party who raises discrimination solely as an affirmative defense shall not be entitled to the relief specified in section 19702 of the Government Code, unless that party has also complied with all filing requirements set forth in sections 64.2 through 64.6.

Note: Authority cited: Sections 18701, Government Code. Reference: Sections 18675, 19701 and 19702 Government Code.

§ 64.6 Acceptance of Complaint; Notice

(a) If, after review of the complaint, the Appeals Division determines that the complaint does not meet all filing requirements, the Appeals Division shall notify the Complainant in writing of the reasons for its determination. The Complainant may file an amended complaint within 20 days of receipt of the notice of rejection of the complaint.

(b) Upon acceptance of the complaint or amended complaint, the Appeals Division shall serve the operative complaint on the named Respondents by mailing a copy of the complaint to the legal office, or other designated office, of the appointing power, and to the business address of any individually named respondent.

(c) The provisions of Article 6 of these regulations apply to discrimination complaints accepted by the Appeals Division.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 1970 and 19702, Government Code.

ARTICLE 9. MERIT ISSUE COMPLAINTS

§ 66.1 Merit Issue Complaints

(a) Merit issue complaints are complaints that the State Civil Service Act or Board regulation or policy has been violated by a state agency. These complaints include but are not limited to, interference with promotional opportunities, interference with a person's access to any SPB appeals process, and the designation of managerial positions pursuant to Government Code section 3513. Merit issue complaints do not include appeals of actions that are specifically provided for elsewhere in law or in Board regulations. Each state agency shall establish and publicize to its employees its process for addressing merit issue complaints. That process shall include provisions for informing employees of their right to appeal the state agency's decision on the merit issue complaint to the Appeals Division. Failure of a state agency to respond to a merit issue complaint within 90 days of receipt of the complaint shall be deemed a denial of the complaint's allegations and shall release the appellant to file an appeal directly with the Appeals Division. An appeal of a merit issue complaint shall be filed with the Appeals Division within 30 days of the state agency's denial of the complaint.

(b) Merit Issue Complaints are assigned to investigative review by an Investigative Officer pursuant to section 53.2.

Note: Authority cited: Section 18701, Government Code. Reference: Section 12940, 18675, 18952, 19701, 19702, 19230, 19231, Government Code.

ARTICLE 10. WHISTLEBLOWER RETALIATION COMPLAINT PROCESS

§ 67.1 Whistleblower Retaliation Complaints

Any state employee or applicant for state employment, or any employee or applicant for employment with a California Community College, who believes that he or she has been retaliated against in employment for having reported improper governmental activity, as that phrase is defined in Government Code section 8547.2(b), or Education Code section 87162(c), or for having refused to obey an illegal order or directive, as defined in Government Code section 8547.2(e), or Education Code section 87162(b), may file a complaint and/or appeal with the State Personnel Board in accordance with the provisions set forth in sections 67.2 through 67.8. For purposes of complaints filed by community college employees or applicants for community college employment, the local community college district shall be deemed the "appointing power."

Note: Authority cited: Section 18701, Government Code. Reference: Sections 87162, 87164, Education Code; and Sections 8547.2, 8547.8, and 19683, Government Code.

§ 67.2 Requirements for Filing Whistleblower Retaliation Complaint with the State Personnel Board

An individual desiring to file a complaint of retaliation with the SPB must adhere to the following requirements:

(a) The complaint shall be filed with and received by the Appeals Division within one year of the most recent alleged act of reprisal. The complaining party shall submit an original complaint and copy of all attachments, and enough copies of the complaint and attachments for the Appeals Division to serve each entity and person alleged to have engaged in retaliatory conduct and against whom damages and/or disciplinary action is sought.

(b) All complaints shall be in writing and shall identify and include the following:

(1) Clearly identify the protected activity that the Complainant engaged in, the date(s) the Complainant reported the improper governmental activity, and the person(s) to whom the Complainant reported the improper governmental activity;

(2) Clearly identify the specific act(s) of reprisal or retaliation alleged to have occurred, and the entity and/or person(s) responsible for the reprisal or retaliation;

(3) A sworn statement, under penalty of perjury, that the contents of the complaint are true and correct;

(4) The name and business address of each individual and entity alleged to have committed reprisal or retaliatory acts;

(5) Specify what relief and/or damages Complainant is seeking against any Respondent(s) as a result of the alleged reprisal or retaliation, and include an extra copy of the complaint and all accompanying documents for the SPB to serve on each of the Respondents; and

(6) Whether the Complainant has filed a complaint of retaliation with the Office of the Inspector General pursuant to Penal Code section 6129, and if so, the date the complaint was filed.

(c) If adverse action is sought against any individually named Respondent, pursuant to the provisions of Government Code section 19574, the complaint must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto.

(d) Each complaint shall be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The Complainant shall submit a separate document with the complaint stating the reasons for good cause.

(e) The above procedures do not apply in those cases where an Appellant raises retaliation as an affirmative defense when appealing a notice of adverse action, pursuant to Government Code sections 19575 or 19590, when appealing a notice of rejection during probation, pursuant to Government Code section 19175, when appealing a notice of medical action, pursuant to Government Code section 19253.5, when appealing a notice of non-punitive action, pursuant to Government Code Section 19585, or when appealing a notice of career executive assignment termination pursuant to Government Code section 19889.2. Neither the remedies nor the relief available to a complaining party pursuant to the provisions of Government Code sections 8547.8 or 19683, shall, however, be available to a party who raises whistleblower retaliation as either an affirmative defense or as a separate cause of action in any other SPB hearing, unless that party has first complied with all filing requirements set forth in this section.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.3, 8547.8, 18670, 18671, 18675, 19175, 19253.5, 19572, 19583.5, 19585, 19683 and 19889.2; and Section 6129, Penal Code.

§ 67.3 Acceptance of Whistleblower Complaint

(a) Within 10 business days of receipt of the complaint, the Appeals Division shall determine whether it has jurisdiction over the complaint and whether the Complainant meets the filing requirements set forth in section 67.2. The Appeals Division shall also determine whether the complainant has complied with all other requirements for filing a retaliation complaint, as set forth in Government Code sections 8547-8547.12 and 19683 and/or Education Code sections 87160-87164.

(b) If the Appeals Division determines that the complaint does not meet all filing requirements, it shall notify the complaining party in writing that the complaint has not been accepted and the reason(s) for that determination. The complaining party may thereafter be permitted to file an amended complaint within 10 business days of service of the notice of non-acceptance of the complaint.

(c) Unless time is extended by the complaining party in writing, the Executive Officer shall, within 10 business days of receipt of the complaint or amended complaint, notify the complaining party of a decision to either:

(1) dismiss the complaint for failure to meet jurisdictional or filing requirements; or

(2) refer the case for investigation in accordance with the provisions of section 67.4; or

(3) schedule the case for an informal hearing before an administrative law judge, in accordance with the provisions of section 67.5.

(d) Except for those complaints amended pursuant to subdivision (b), any amendment for a whistleblower retaliation complaint may only be accepted upon a showing of good cause.

(e) In accordance with the provisions of Penal Code section 6129, the SPB shall be entitled to defer review of a complaint filed by an employee of the Department of Corrections and Rehabilitation in those cases where the employee has filed a similar complaint with the Office of the Inspector General.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 87160-87164, Education Code; Sections 8547-8547.2, 8547.8, 18670, 18671, 18675, 19572, 19574, 19575, 19683 and 19590, Government Code; and Section 6129, Penal Code.

§ 67.4 Cases Referred to Investigation

(a) If the Executive Officer assigns a complaint for investigation, the Executive Officer or the assigned investigator(s) shall conduct the investigation in the manner and to the degree they deem appropriate, and shall have full authority to question witnesses, inspect documents, and visit state facilities in furtherance of their investigations. All state agencies and employees shall cooperate fully with the investigators, or be subject to disciplinary action for impeding the investigation. The investigators, pursuant to the provisions of Government Code section 18671, shall have authority to administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Article 3 (commencing with section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure, in order to ensure a fair and expeditious investigation.

(b) The Executive Officer shall issue findings regarding the allegations contained in the complaint and a recommended remedy, if any, based on the investigation, in accordance with the provisions of section 67.6.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 19582, 19583.5 and 19683, Government Code; Section 6129, Penal Code, and Section 2016 *et seq.*, Civil Procedure Code.

§ 67.5 Cases Referred to Informal Hearing

(a) For those complaints assigned to an informal hearing before a Hearing Officer the Appeals Division shall serve notice of the informal hearing on all parties to the complaint a minimum of 30 days prior to the scheduled hearing date. Service on each respondent shall be made at the respondent's business address. The notice shall:

(1) include a complete copy of the complaint with all attachments, and a copy of the statutes and rules governing the informal hearing; and

(2) require each named Respondent to serve on the Complainant and file with the Appeals Division, at least 10 days prior to the informal hearing, a written response to the complaint, signed under penalty of perjury, specifically addressing the allegations contained in the complaint.

(b) The informal hearing shall be conducted in conformance with those procedures set forth in Government Code section 11445.10 *et seq.*, and may in the discretion of the Hearing Officer, include such supplemental proceedings as ordered by the Hearing Officer, and as permitted by section 11445.10 *et seq.* of the Government Code, to ensure that the case is heard in a fair and expeditious

manner. The Hearing Officer shall have full authority to question witnesses, inspect documents, visit state facilities in furtherance of the hearing, and otherwise conduct the hearing in the manner and to the degree he or she deems appropriate. The informal hearing and any supplemental proceedings shall be recorded by the Hearing Officer. All parties shall, upon request and payment of applicable reproduction costs, be provided with a transcript or a copy of the recording of the informal hearing.

(c) Following the informal hearing and any supplemental proceedings, the Hearing Officer shall issue findings for consideration by the Executive Officer regarding the allegations contained in the complaint, together with all recommended relief, if any, proposed to remedy any retaliatory conduct.

(d) The Executive Officer shall have the discretion to adopt the Hearing Officer's findings and recommended remedies in their entirety; modify the Hearing Officer's findings and recommended remedies; or reject the Hearing Officer's findings and recommended remedies, and:

(1) issue independent findings after reviewing the complete record; or

(2) remand the case back to the Hearing Officer, or refer the matter to an ALJ for further proceedings.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 11445.10 *et seq.*, 11513, 18670, 18671, 18672, 18675, 19572, 19574, 19575, 19582, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.

§ 67.6 Findings of the Executive Officer

(a) The Executive Officer shall issue a Notice of Findings within 60 business days of the date the Executive Officer accepts the complaint pursuant to section 67.3, unless the complaining party agrees, in writing, to extend the period for issuing the findings, or unless the time period is otherwise tolled.

(b) In those cases where the Executive Officer concludes that the allegations of retaliation were not proven by a preponderance of the evidence, the Executive Officer shall issue a Notice of Findings dismissing the complaint and that decision shall be deemed the final decision of the Board. The Notice of Findings shall notify the Complainant that his or her administrative remedies have been exhausted and that the Complainant may pursue whatever judicial remedies are available to him or her.

(c) In those cases where the Executive Officer concludes that the Complainant proved one or more of the allegations of retaliation by a preponderance of the

evidence, the Notice of Findings shall identify the allegations deemed substantiated, and the named Respondents deemed to have engaged in retaliatory acts. If the Notice of Findings concludes that any individual manager, supervisor, or other employee engaged in improper retaliatory acts, the Notice of Findings shall identify the legal causes for discipline under section 19572 of the Government Code.

(d) The Notice of Findings shall inform any Respondent found to have engaged in retaliatory acts of his or her right to request a hearing regarding the Notice of Findings. Any such request shall be filed with the Executive Officer, and served on all other parties within 30 days of the issuance of the Notice of Findings. Upon receipt of a timely request for hearing, the Board shall, at its discretion, schedule a hearing before the Board, or an evidentiary hearing before an ALJ, regarding the findings of the Executive Officer. The hearing shall be conducted in accordance with Article 6, beginning with section 56.1. If a timely request for hearing is not filed with the SPB, the Board may order any appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by section 8547.3 of the Government Code.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671.1, 18675, 19572, 19574, 19575, 19582, 19590 and 19683, Government Code; and Section 6129, Penal Code.

§ 67.7 Disciplinary Action for Proven Retaliatory Acts

(a) In those cases where the Board issues a final decision that finds that a manager, supervisor, or other state civil service employee has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 days of the issuance of the Board's order and to also, within that same time period, notify the Office of the State Controller of the disciplinary action taken against the individual. The appointing authority shall also, within 40 days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(1) In accordance with the provisions of Penal Code section 6129, subdivision (c)(3), any employee of the Department of Corrections and Rehabilitation found to have engaged in retaliatory acts shall be disciplined by, at a minimum, a suspension without pay for 30 days, unless the Board determines that a lesser penalty is warranted. In those

instances where the Board determines that a lesser penalty is warranted, the decision shall specify the reasons for that determination.

(b) In those cases where the Board issues a final decision that finds that any community college administrator, supervisor, or public school employer, has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 days of the issuance of the Board's order and also, within 40 days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(c) Any decision, as described in subdivision (a) or (b), shall be deemed a final decision of the Board and the individual against whom the disciplinary action was taken shall not have any further right of appeal to the Board concerning that action, with the exception of a Petition for Rehearing.

(d) For purposes of this Section, the Board's decision is deemed to be final after:

(1) 30 days has elapsed from the date the Executive Officer issued his or her Notice of Findings dismissing the complaint; or

(2) a request for hearing pursuant to section 67.7(c) has not been timely filed with the Board; or

(3) 30 days has elapsed from the date that the Board has issued a decision adopting or modifying the proposed decision submitted by an administrative law judge after an evidentiary hearing and a Petition for Rehearing concerning that decision has not been filed with the Board; or

(4) a decision has been issued by the Board after a hearing before that body and no Petition for Rehearing concerning that decision has been filed with the Board.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 18710, 19572, 19574, 19582, 19583.5, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.

§ 67.8 Consolidation with Other Hearings

(a) The Executive Officer or the assigned ALJ shall possess the requisite discretion to direct that separate, reasonably related cases be consolidated into a single hearing. Whenever two or more cases are consolidated, the assigned administrative law judge shall permit the parties a reasonable opportunity to conduct discovery prior to the first scheduled hearing date, if the discovery

provisions set forth in sections 59.1 through 59.4 are negatively impacted by the consolidation.

(b) In those cases where one or more individually named Respondents have been joined in the consolidated hearing, the administrative law judge may, in his or her discretion, make such orders as may appear just in order to prevent any named Respondent from being embarrassed, delayed, or put to undue expense, and may order separate hearings or make such other order as the interests of justice may require.

(c) In those cases where an appeal from adverse action, rejection during probationary period, medical action, or non-punitive action is consolidated with a whistleblower retaliation complaint, and the whistleblower retaliation complaint identifies specifically named individuals against whom damages or adverse action is sought pursuant to the provisions of section 67.2(c) each individually named Respondent shall have the right to participate in the consolidated hearing in such a manner as to reasonably defend him or herself against the allegations contained in the whistleblower retaliation complaint. These rights shall include, but not be limited to:

(1) to be represented by a representative of his or her own choosing during the consolidated hearing;

(2) to present a defense on his or her own behalf concerning the allegations and issues raised in the whistleblower retaliation complaint, separate and apart from any defense presented by the appointing power or any other named Respondent;

(3) to conduct pre-hearing discovery concerning allegations and issues raised in the whistleblower retaliation complaint;

(4) to examine and cross examine witnesses concerning allegations and issues raised in the whistleblower retaliation complaint;

(5) to introduce and challenge the introduction of evidence concerning allegations and issues raised in the whistleblower retaliation complaint; and

(6) to present oral and/or written argument to the decision-maker concerning allegations and issues raised in the whistleblower retaliation complaint.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 8547.8, 11513, 18670, 18671, 18672, 18675, 19175, 19253.5, 19575, 19582, 19585, 19590 and 19683, Government Code.

BEFORE THE STATE OF CALIFORNIA

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):

FOR SPB ONLY

REPRESENTING:

APPELLANT:

RESPONDENT:

SUBPOENA:

☐ DUCES TECUM ☐ STATEWIDE

CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME):

1. YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:

a. Date:

Time:

b. Address:

2. AND YOU ARE:

- a. ☐ ordered to appear in person and attend a hearing to be held in the above-captioned matter before the Administrative Law Judge, State Personnel Board.
- b. ☐ ordered to appear in person regardless of distance. When this section is countersigned by an Administrative Law Judge, this is a statewide subpoena under Government code Section 18672. Such subpoena must be accompanied by an affidavit establishing that you are a material witness to the proceeding.

Date

Administrative Law Judge, State Personnel Board

- c. ☐ ordered to designate one or more persons to testify on your behalf as to the matters described in the accompanying statement.
- d. ☐ not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1580 and 1561.
- e. ☐ ordered to make the original business records described in the accompanying affidavit available for inspection at your business address by the attorney's representative and to permit copying at your business address under reasonable conditions during normal business hours. (Evid Code § 1580(e)).
- f. ☐ ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of sections 1560 and 1561 and 1562 of the Evidence code will not be deemed sufficient compliance with this subpoena.

3. **IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

a. Name:

b. Telephone Number:

4. **WITNESS FEES:** You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.

Date

ADMINISTRATIVE LAW JUDGE, STATE PERSONNEL BOARD
or Licensed Member of California State Bar

Bar #

PROOF OF SERVICE OF SUBPOENA

1. I served this ☐ **subpoena** ☐ **subpoena duces tecum** and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (name): _____	c. Date of Delivery: _____
b. Address where served: _____	d. Time of Delivery: _____
e. Witness Fees (check one): 1. <input type="checkbox"/> were offered or demanded and paid. Amount: \$ _____	
2. <input type="checkbox"/> were not demanded or paid	
f. Fees for service: Amount: \$ _____	

2. I received this subpoena for service of (date): _____

3. Person serving:
- a. ☐ Not a registered California process server.
 - b. ☐ Registered California process server.
 - c. ☐ Employee or independent contractor of a registered California process server.
 - d. ☐ Exempt from registration under Business & Professionals Code section _____
 - e. ☐ California Sheriff, Marshall, or Constable.
 - f. ☐ Other: _____
 - g. ☐ Name, address and telephone number, and, if applicable, county of registration and number. _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the is declaration is executed on:

Date: _____ Signature: _____

(For California Sherrif, Marshall, or Contable use only)

I Certify that the foregoing is true and correst and that this certificate is executed on:

Date: _____ At (place): _____ Signature: _____